



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution amending the San Joaquin County Multi-Species Habitat conservation and open space plan development Fee.

MEETING DATE: November 2, 2005


PREPARED BY: Community Development Department

RECOMMENDED ACTION: That the City Council adopt a resolution amending the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan development fee.

BACKGROUND INFORMATION: On February 21, 2001 the City of Lodi adopted the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). On December 19, 2001 the City established development fees pursuant to this plan. These development fees are used to mitigate the cumulative impacts of new development on undeveloped lands within Lodi and San Joaquin County. As further explained in the attached staff report from the San Joaquin Council of Governments (SJCOG), it is necessary to approve an interim increase in Habitat Conservation Plan (HCP) fees. SJCOG will be updating the SJMSCP financial plan which is estimated to take a total of seven to nine months. SJCOG does not wish to wait until the updated financial plan is in place before addressing the need for a fee increase, therefore this interim fee was developed. In September, 2005 the SJCOG Board unanimously approved the HCP interim fee increase. All local jurisdictions must now approve the interim fee increase by January 1, 2006.

FISCAL IMPACT: With the adoption of this fee increase the fee per acre will go from \$1,819.00 for Natural and Agriculture land to \$3,145.00 and will only affect developers. No fiscal impact on the City.

FUNDING AVAILABLE: None required.


Randy Hatch
Community Development Director

RH/kjc
Attachments

APPROVED: 
Blair King, City Manager

Staff Report

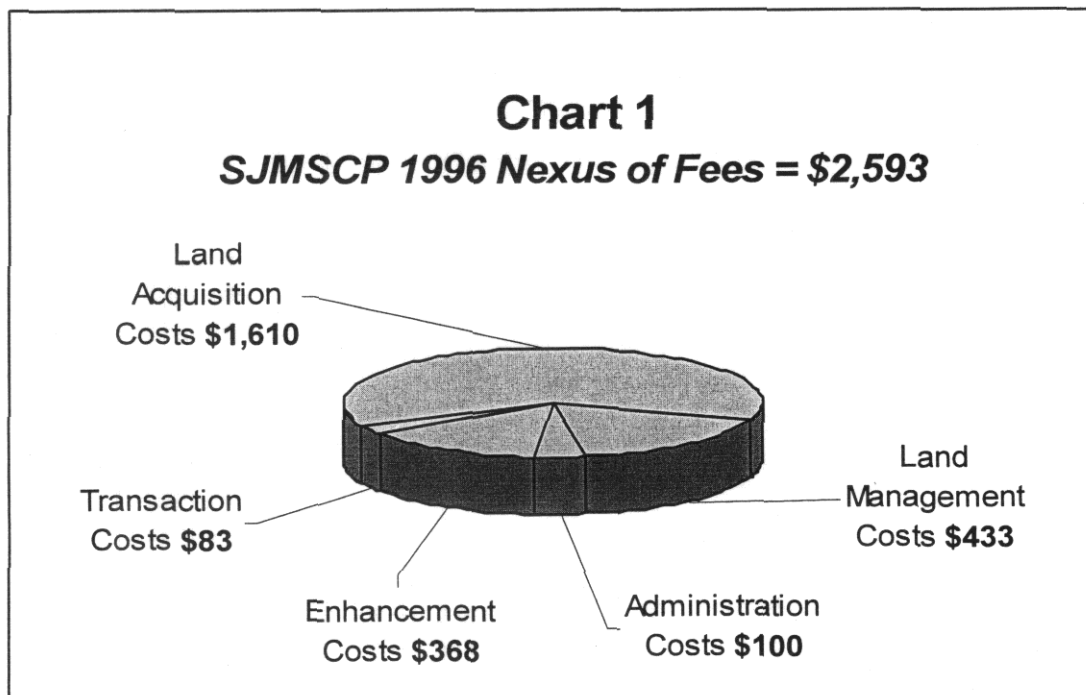
SUBJECT: SJMSCP Interim Fee Increase

RECOMMENDED ACTION: Motion to Approve 1) Adoption of an Interim SJMSCP Fee and 2) Pursue Adoption of Fee With Local Jurisdictions.

DISCUSSION:

In a letter dated August 8, 2005, the USFWS and California Department of Fish and Game expressed a concern about “**SJMSCP Funds for viable preserve acquisition**”. The concern arose from the annual meeting for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and subsequent meetings updating the permitting agencies regarding staff’s acquisition for mitigation needs.

During a discussion at the August HTAC meeting, the permitting agencies stressed to each permit holding jurisdiction the responsibilities required under the plan. There were two major points of the discussion brought forth by the permitting agencies. The first was the lack of funds for immediate mitigation needs and long term management of preserves under the plan (Section 7.2.5) due to the adoption of fees in 2001 being \$1,000 less then the 1996 financial nexus written for the successful implementation of the SJMSCP (Chart 1). The second point was a rush of



projects to seek coverage between the time of the announcement of the new nexus study and actual fee adoption. Project proponents would seek participation for coverage at a lower rate than the anticipated increase in fees. The permitting agencies believe that funds will not be adequate to the current and future commitments under the permit.

The permitting agencies stressed concern about creating a mitigation back log and funding shortfall due to the 6-9 months of time associated with this process while projects continue to pay inadequate fees. Action to develop an update to the SJMSCP financial plan is underway, as instructed by a decision in June 2005, by the SJCOG, Inc. Board, which will be included in the major amendment later this fall. The analysis will be used to establish the current financial needs of the plan in every area and streamline the process where needed. The RFQ, selection and analysis should take a few months and the elected firm should complete the analysis in the spring of 2006. With the analysis completed, staff will bring the new SJMSCP Financial Plan to HTAC for recommendation to the SJCOG, Inc. Board for approval and then to each jurisdiction as a resolution for adoption which is estimated to take 3-6 months more. Staff has begun the RFQ process which is estimated to take a total of 7-9 months.

In the 7-9 month process for the new financial nexus to be created and adopted, projects continue to seek coverage under the SJMSCP. The plan is designed to streamline the process for development to occur in the county and allow mitigation of lost habitat to be acquired in one of four procedures. The four possible options for a project to elect participation under the SJMSCP are 1) to pay a fee per acre for habitat to be disturbed; 2) an acre for acre dedication of land of similar habitat with an endowment for management under the plan; 3) design of the project to not effect habitat; and 4) opt out of the plan by working with the permitting agencies to provide an equal mitigation as stated in the plan. Many project proponents elect the first option for the easy process and what has been called a "great deal" when compared to other HCPs in California (see Attachment 1). As this occurs, loss of habitat will continue at a rate that is insufficient to fulfill the obligations of the all the permittees under the plan.

The current 2005 fees for Agricultural Habitat, Natural Habitat and Vernal Pool Habitat (wetted and uplands) simply are not keeping up with the cost of land. The fees collected at \$909 (Multi-purpose Habitat), \$1,819 (Agriculture or Natural Habitat), and \$36,381/\$6,074 (Vernal Pool wetted/uplands) are not dedicated only to acquire mitigation lands. The per acre fee for each habitat type are to cover the following costs which are required for success of the SJMSCP:

- pre-construction site visits by biologist to yield Incidental Take Minimization Measures (ITMMs) on each project,
- acquisition of preserve land (through conservation easement or fee title),
- enhancements for preserves,
- management in perpetuity of established preserves,
- administration of the SJMSCP,
- legal defensibility of preserves, and
- direct project management costs of preserves (staff time, closing costs, preserve management plan creation, public notification and NLP process).

The actual amount staff has available is less than what is collected because of the costs described above. The management and enhancement costs for SJMSCP preserves, described in 1996 dollars in the plan under Table 7.2.2-1: *Estimated SJMCSP Enhancement/Restoration Costs* and 7.2.3-1: *SJMSCP Management Cost Factors* based on habitat types, are required to be set aside from the per acre fee to ensure long management of preserves. Depending on the habitat type, the cost for enhancement/restoration can range from \$40 - \$8,300 per acre and \$400-\$560 per acre for management in perpetuity of the preserves. Therefore, one acre of Agriculture Habitat collected at \$1,819 per acre actually leaves staff about \$1,319 per acre to secure an acre of preserve with no other costs for the plan removed (subtracting just these two cost factors: enhancement/restoration = \$100 per acre and management costs = \$400 per acre from the current fee of \$1,819 per acre for Agricultural Habitat). If the above scenario was Natural lands that require a 3:1 mitigation ratio, staff would have \$439.68 to acquire one acre of Natural Habitat.

To address this concern by the permitting agencies until the major amendment process including a new financial plan for the SJMSCP can be approved, SJCOG, Inc. staff calculated an interim fee to be adopted based on the 1996 financial nexus and Table 7.2.5-1: *SJMSCP Cost Estimates Per Acre* cited in the plan by using the California Construction Cost Index (CCCI) as the escalator (Table 1). The increase in the interim fee to be assessed for each habitat type is 73% over the current fee amounts.

Table 1. - Implemented Fees and "Total Costs Fee" from Plan Table 7.2.5-1 Inflated with the CCCI

	Implemented Fees	Total Costs from SJMSCP Table 7.2.5-1
Starting Fee	\$1,500.00	\$2,593.20
1996-2002 CCCI (12.68%)	\$1,690.00	\$2,922.02
2003 (no CCCI change)	\$1,690.00	\$2,922.02
2004 CCCI (2.02%)	\$1,724.00	\$2,981.04
2005 CCCI (5.5%)	\$1,819.00	\$3,145.00

RECOMMENDATION:

On September 14, 2005, the HTAC recommended this action be taken to the SJCOG, Inc. Board for approval. Staff recommends the following interim fees to be adopted under the SJMSCP by the SJCOG, Inc. Board (Table 2). Staff will provide each local jurisdiction with a draft resolution to be taken back to the jurisdictions and adopted (Attachment 2). Since each jurisdiction has a different process for adoption of resolutions regarding public noticing and comments, staff estimates all jurisdictions will have the interim fee approved and adopted by

January 1, 2006. After that date, SJCOG, Inc. will not accept any fees collected per acre below the interim amount for coverage under the SJMSCP. If fees are collected for less than the interim amount, the permit holding jurisdiction will be responsible for any remaining balance between the current fee and the new interim.

Table 2. - Interim Fee for SJMSCP

Habitat Type	Current Fee Per Acre	Interim Fee Per Acre
Multi-Purpose Open Space	\$909	\$1,572
Natural	\$1,819	\$3,145
Agriculture	\$1,819	\$3,145
Vernal Pool - uplands	\$6,074	\$9,597
Vernal Pool - wetted	\$36,381	\$57,482

Copies of the Economic Analysis of the SJMSCP performed by Hausrath Economics Group dated April 7, 1997 will be made available through SJCOG staff upon request.

Prepared by: Steve Mayo, Senior Regional Planner
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Comparison of Habitat Conservation Plan's Fees

Staff has researched a number of Habitat Conservation Plans in order to compare various impact fees with other jurisdictions. The following summaries are staff's findings in Spring 2005:

The East Contra Costa County Habitat Conservation Plan (ECCCHCP), whose draft plan was released June 2005, is a plan that is most similar to the SJMSCP. They have separated fees based on the type of habitat that will be consumed. Their drafted fees are as follows:

Habitat Type	Fee/Acre	SJMSCP Fee/acre	SJMSCP/ECCCHCP Comparison
<i>Cultivated Agricultural</i>	\$11,466/acre	\$1,819/acre	16%
<i>Natural Lands</i>	\$22,932/acre	\$1,819/acre	8%
<i>Infill Lands</i>	\$5,766/acre	\$909/acre	16%
<i>Wetlands</i>	\$59,000-169,000/acre	\$6,074 & \$36,381/acre	10-21%

Cultivated Agricultural, Natural Lands and Infill lands are pay zones that are preset in the plan. Regardless of the habitat that is actually being consumed, if a project falls within a certain pay-zone, the applicant must pay the required fee. The Wetland category is an additional fee amount. For example if there was a 100 acre parcel in the cultivated agricultural zone with 10 acres of wetland, the applicant would pay \$1,146,600 (100 acres X \$11,466) plus an additional \$590,000 (10 acres X \$59,000) for a total fee of \$1,736,600. SJMSCP fee would charge a similar applicant \$224,450, just 13% of the ECCCHCP fee. The ECCCHCP does not require to mitigate at a certain ratio but the plan calls for twice as much land to be preserved verses developed. ECCCHCP staff believes that with current fees, they should be able to mitigate at roughly 1:1. SJCOG Staff has plans to meet with a representative from Jones & Stokes who has consulted with ECCCHCP to discuss issues such as Temporary Impacts and Fee categories in order to formulate our own amendments to the SJMSCP.

The Natomas Basin Habitat Conservation Plan's (NBHCP) is in operation in the Sacramento Region with many similarities to the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). The NBHCP mitigation fee was recently raised to \$24,897/acre which includes land acquisition, restoration, enhancement, monitoring, administration costs, operation and management endowments. Developers may also choose to donate land in lieu of the full fee, but are required to pay a \$12,397/acre to manage the land in perpetuity. The fee is reviewed at least annually on or before March 1 of each calendar year and is adjusted based on the Consumer Price Index (CPI). The NBHCP calls for a 0.5 to 1 mitigation ratio, meaning for every acre which is taken through development 0.5 acres are required to be preserved. The SJMSCP operates with 7.3% of their fee and requires to mitigate at anywhere from two to six times the amount of NBHCP.

The County of Sacramento and the City of Elk Grove have similar mitigation impacts fees concerning Swainson's Hawk Habitat. Both recently increased fees to meet the growing land costs. Each plan calls for an \$18,325/acre impact fee for the consumption of Swainson's Hawk Habitat. For any project 40 acres or larger, developers are required to preserve, through

conservation easement or fee title, suitable Swainson's Hawk habitat at an 1:1 ratio. The applicant must also pay the jurisdiction an operations and maintenance fee not to exceed \$3,500/acre.

For projects less than 40 acres, applicants may dedicate land with additional operation and managements fees or they may choose to pay the mitigation fee at \$18,325/acre. In addition, each project must pay an administrative fee per impact mitigation fee, easement or fee title, not to exceed \$382.00/transaction. Based solely on the fee amount, the SJMSCP is operating at 10% that of the Sacramento county and/or Elk Grove Mitigation fees.

Placer County HCP is another plan which is scheduled to go public in the near future. After discussion with their staff, it was found that their proposed fee for any type of development or consumed habitat is \$19,200/acre. They are currently in an Economic Analysis Phase to determine if the fees need to be raised in order to accommodate for escalating land and management costs. The fees to cover land acquisition are roughly \$6000/acre leaving the balance of \$13,200/acre for management, enhancement, administration, ect.. If Placer County HCP is implemented at current rates, the SJMSCP will be operating at 10% of their fees.

The San Diego Association of Governments (SANDAG) has composed the Multiple Habitat Conservation Program (MHCP) which is a comprehensive conservation planning process that addresses the needs of multiple plant and animal species in North Western San Diego County. The MHCP encompasses the cities of Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista. The Plan itself does not impose any fees, but individual jurisdictions with sub-area plans can implement fees. The city of Carlsbad has a fee structure which allows applicants to pay a fee for consumption of particular habitat such as agricultural lands, non-native grasslands and eucalyptus woodland, but most other "native" or critical habitat is required to mitigate with a donation of in-kind land. The mitigation ratios vary depending on the given importance to the habitat, but range from a \$7,897 fee/acre at a 1:1 mitigation ratio to a \$790 fee/acre for a 0.1:1 mitigation ratio. Carlsbad staff mentioned they are currently in the process of raising their fees to a proposed \$20,000 for the 1:1 mitigation ratio.

The Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) is intended to provide a means to standardize mitigation/compensation measures for the covered species so that, with respect to public and private development actions, mitigation/compensation measures established by the Plan will concurrently satisfy applicable provisions of Federal and State laws pertaining to endangered species protection. The plan is scheduled for public release in the near future. The draft plan calls for a \$1975/acre impact mitigation fee for any type of land consumed within the jurisdiction. This fee covers acquisition and administration only, management and enhancement are covered through multiple fees and endowments. With booming real-estate prices in the region, staff is taking the fees back through economic studies and plan for them to be increased by 50%-60%. The plan does not have an established mitigation ratio, but every five year period staff is required to show acquired land proportional to consumed land. CVMSHCP staff commented that most land throughout their jurisdiction is remote and secluded, therefore land acquisition prices are not as substantial as here in the San Joaquin Valley.

The Western Riverside County Multi-Species Habitat Conservation Plan is a comprehensive, Multi-Jurisdictional Habitat Conservation Plans focusing on conservation of species and their associated habitats in Western Riverside County. Fees are based on per dwelling unit calculations decreasing the fee when density increases. Commercial and Industrial land development pay a per acre fee. The fees are as follows:

Single Family Residential	\$1,651/per dwelling
Residential (8.1-14 du/acre)	\$1057/per dwelling
Residential (>14.1 du/acre)	\$859/per dwelling
Commercial	\$5,620/ per acre
Industrial	\$5,620/per acre

The said fees do not take into account the type of habitat being consumed, and mitigation is not required to be the same habitat in a similar area. Individual jurisdictions are responsible for acquiring land with willing land owners and are apportioned a percentage of fees for the acquisition.

RESOLUTION NO. 2005-231

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF LODI AMENDING THE SAN JOAQUIN COUNTY
MULTI-SPECIES HABITAT CONSERVATION AND
OPEN SPACE PLAN DEVELOPMENT FEE

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WHEREAS, the City Council of the City of Lodi adopted Ordinance No. 1707 and Resolution No. 2001-298 establishing the authority for collection of a development fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) for all new developments pursuant to the SJMSCP within the City of Lodi; and

WHEREAS, a "Fee Study" dated July 16, 2001, was prepared, which analyzed and identified the costs, funding, and cost-benefit of the SJMSCP; and

WHEREAS, the purpose of the SJMSCP development fee is to finance the goals and objectives of the SJMSCP that include, but are not limited to, preserve land acquisition, preserve enhancement, land management, and administration that compensate for such lands lost as a result of future development in the City of Lodi and in San Joaquin County; and

WHEREAS, after considering the Fee Study and the testimony received at the public hearing, the Lodi City Council approved said report; and further found that the future development in the City of Lodi will need to compensate cumulative impacts to threatened, endangered, rare, and unlisted SJMSCP Covered Species and other wildlife and compensation for some non-wildlife related impacts to recreation, agriculture, scenic values, and other beneficial open space uses; and

WHEREAS, the SJMSCP development fee adopted in 2001 for natural land and agricultural habitat lands was \$1,500 an acre; and

WHEREAS, the current SJMSCP development fee for natural lands and agricultural lands is \$1,819 an acre for the year 2005 due to annual adjustments consistent with the California Construction Cost Index (CCCI); and

WHEREAS, the Fee Study identified the fee an acre for natural lands and agricultural habitat lands for the year 2005 as \$3,145; and

WHEREAS, the current fee of \$1,819 an acre is inadequate to finance the goals and objectives of the SJMSCP due to the increasing cost of land in San Joaquin County; and

WHEREAS, the SJMSCP development fees are divided into three categories: vernal pool habitat, natural land and agricultural habitat land, and multi-purpose open space conversion; and

WHEREAS, the SJMSCP development fees for vernal pool habitat and multi-purpose open space conversion will likewise be increased consistent with the Fee Study findings for the year 2005. A table illustrating the development fee increases for the three categories of land is attached hereto as Exhibit "A"; and

WHEREAS, to ensure that the SJMSCP development fees keep pace with inflation, annual adjustments, consistent with the CCCI, shall be made to the fees annually; and

WHEREAS, the Fee Study with the SJMSCP and the fee amendment were available for public inspection and review in the office of the City Clerk for more than 10 days prior to the date of this public hearing.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LODI AS FOLLOWS:

1. The City Council finds and declares that the purposes and uses of the development fee and the determination of the reasonable relationship between the fees uses and the type of development project on which the fees are imposed are all established in Resolution No. 2001-298 and remain valid, and the City Council therefore adopts such determinations.
2. The City Council finds and declares that, since adoption of Resolution No. 2001-298, the cost of land has increased in San Joaquin County and that in order to maintain the reasonable relationship established by Resolution No. 2001-298, it is necessary to increase the development fee for the SJMSCP.
3. The development fee for natural lands and agricultural land shall be \$3,145 an acre based on Table 7.2.5-1 in SJMSCP with CCCI increases and is consistent with the Fee Study dated July 16, 2001.
4. The development fee for vernal pool habitat and multi-purpose open space conversion shall be consistent with the table identified in Exhibit "A" and attached hereto.
5. The fee provided in this resolution shall be effective on January 2, 2006, which is at least sixty (60) days after the adoption of this resolution.

Dated: November 2, 2005

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I hereby certify that Resolution No. 2005-231 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 2, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

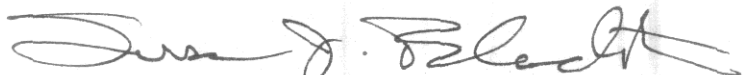

SUSAN J. BLACKSTON
City Clerk

Exhibit A

Habitat Type	Current Fee Per Acre	Interim Fee Per Acre
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